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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,883	12/12/2000	Tim Sales	B-4044 618373-3	9325

7590 01/09/2007
c/o MR. TIM SALES
UP-STATISTICS CORPORATION
15452 CABRITO ROAD #101
VAN NUYS, CA 91406

EXAMINER

DURAN, ARTHUR D

ART UNIT	PAPER NUMBER
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3622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/735,883

Applicant(s)

SALES, TIM

Examiner

Arthur Duran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-35 have been examined.

This Office Action was originally mailed on October 12, 2004. It is being remailed as instructed in the Petition Decision dated 12/12/2006.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3, 28, 31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3, 28, 31 provides for the use of a Tracker tool, Leads Harvester tool, and a Follow-Up Sequence tool, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 3, 28, 31 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

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Claims 3, 28, 31 state the use of the Tracker tool, Leads Harvester tool, and a Follow-Up Sequence tool but do not define the tools in the claims by disclosing the features or steps that comprising utilization of the tools.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rebane (6,539,392) in view of Verba (6,236,977) in further view of Andersen (5,774,883).

Claims 1-35: Rebane discloses software, the Internet, a server connected to the Internet, client computers connected to the Internet, and a database (Fig. 3; Fig. 4); providing sales and marketing support services to the users (Fig. 5d; Fig. 5e; Fig. 6a; Fig. 6b).

Rebane further discloses targeted marketing (col 15, lines 50-62) and utilizing email surveys (col 12, line 64-col 13, line 6).

Verba further discloses marketing and advertising campaigns (col 1, line 5-24; Abstract) and the utilization of multiple campaign formats including, Internet and email (Fig. 4; col 18, lines 50-60).

Verba further discloses the utilization of sales leads (col 3, lines 35-57; col 1, lines 60-65; col 2, lines 35-45).

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Andersen further discloses dynamic, real-time sales and marketing assistances tools (col 1, line 15-col 3, line 5).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Verba's marketing campaigns and Anderson's dynamic marketing assistance to Rebane's sales support services. One would have been motivated to do this in order to provide Rebane with a more comprehensive means to more fully support sales and marketing.

Also, note that the features cited in the claims are rejected by the prior art. Therefore, only the features explicitly stated in the claims as consisting of the functionality of the Tracker tool, Leads Harvester tool, and a Follow-Up Sequence tool are addressed as patentable material referred to by the prior art. That is, the Applicant's claims, features, and steps as stated in the Applicant's claims are being rejected with the prior art.

Conclusion

4. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

a. Gerace (5,848,396) discloses adapting a marketing campaign to a user based on activity.

b. Barnett (6,321,208) discloses adapting a marketing campaign to a user based on activity.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (703)305-4687. The examiner can normally be reached on Mon- Fri, 7:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (703)305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arthur Duran
Primary Examiner
9/6/04 (originally)
1/3/07 (now)